

REMARKS

Claims 42, 43, 45 – 52, and 54 – 58 are presented for reconsideration and further examination in view of the foregoing amendments and following remarks.

In the outstanding Office Action, the Examiner:

- withdrew all previous grounds of rejection, which Applicants note with appreciation;
- objected to claims 42 and 57 for informalities;
- rejected claims 42, 43, 45 – 52, 54, 55, and 58 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,517,021 to Kaufman et al. (hereinafter referred to as “Kaufman”); and
- rejected claims 56 and 57 under 35 U.S.C. 102(b) as being anticipated by Kaufman in view of U.S. Patent No. 6,629,935 to Miller et al (hereinafter referred to as “Miller.”)

Initially, Applicants note with concern that **the Examiner failed to address the newly presented features of claim 42 anywhere in the Office Action.** In particular, the Examiner makes no mention whatsoever of any of the following features, set forth in the previous response:

- a computer processor programmed to stop “the collection of data after an occurrence of a predetermined number of faults or after receiving an indication that the data collected is reliable;” In distinction, Kaufman is drawn to means for minimizing faults (such as the notch filter of col. 4, or the contextual filtering of col. 9), but no processor is programmed to stop the collect of data under these conditions;
- “a plurality of electrodes configured to be connected to a scalp of a patient, wherein at least one electrode is configured to be placed over the visual cortex of the patient;” in distinction, the electrodes of Kaufman are placed only on the

forehead of a patient, and while the Examiner states that the electrodes are “capable of being placed over the visual cortex of a patient,” this is not the same as an electrode “configured to be placed over the visual cortex of a patient,” and the Examiner has not shown how Kauffman’s configuration of forehead electrodes sufficiently meets this feature.

- “brain potentials” are measured; in distinction, in Kaufman eye movements are measured, but *brain* potentials *per se* are not, and the Examiner makes no representation whatsoever that the device of Kaufman measures brain potentials.

Again, the Examiner addresses none of the above features in the outstanding Office Action.

Applicants’ representative was granted a telephone interview with the Examiner on November 5, 2007 to discuss this omission. In the interview, the Examiner indicated that he unintentionally omitted grounds for rejection of the newly-presented features of claim 42, and agreed that Applicants were entitled to clear grounds of rejection regarding these features.

In the same interview, the Examiner expressed concern that the newly-introduced feature in claim 42 of a processor “executing instructions for stopping the collection of data” failed to add sufficient structural limitation to the claims. The Examiner proposed that an amendment to claim 42 reciting that the processor is “programmed to stop the collection of data,” along with corresponding amendments to claims 47, 49, 51, 55, and 58, would permit the Examiner to search for and consider these features as a structural limitation, and then to providing an indication of allowability or, alternatively, a complete recitation of the previously-omitted grounds for rejection.

Therefore, **Applicants request that the finality of the Office Action be withdrawn**, as the previous Office Action was incomplete.

Further, Applicants request reconsideration of claim 42, and the claims dependent therefrom, as presently presented. **Applicants have presented herewith amendments to claims 42, 46, 47, 49, 51, 55, 57, and 58, which obviate the Examiner's objections, and which positively recite that the claimed processor is "programmed to" perform various steps, including *inter alia* to "stop the collection of data after the occurrence of a predetermined number of faults or after receiving an indication that the data collected is reliable."** It is respectfully submitted that this feature is not disclosed, taught, or suggested in the prior art, and therefore that the cited art does not anticipate the present claims. It is further submitted that the above amendments do not introduce any new matter to this application within the meaning of 35 U.S.C. 132.

Applicants respectfully request that the Examiner enter the above amendments, perform any search with may be required for the consideration of amended claim 42, and provide Applicants with an indication of the allowability of claim 42 and the claims dependent therefrom, or alternatively, a complete and proper rejection thereof.

As a new Office Action is expected, Applicants, **with no prejudice or disclaimer**, make no arguments regarding the independent patentability of any claims dependent from claim 42. Further, **as the previous Office Action was incomplete, it is respectfully submitted that no Request for Continued Examination is required at this time.**

CONCLUSION

In light of the foregoing, Applicants submit that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants

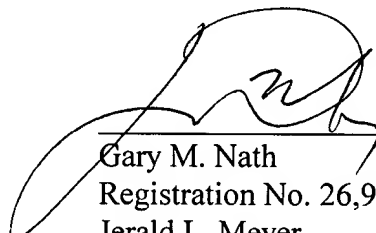
respectfully request that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,
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